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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Cook Composites and Polymers Co.

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Serial No. 76353042

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Nicole J. Renouard of Whyte Hirschboeck Dudek S.C. for Cook Composites and Polymers Co.

Verna Beth Ririe, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

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Before Simms, Hohein and Hairston, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Cook Composites and Polymers Co. has filed an application to register the mark ARMORGUARD for "chemicals for use in industry, namely, synthetic resins for use in the manufacture of composite articles and gel coats" in International Class 1; and "polyester resin gel coat in liquid form intended for use as a coating that forms the outer layer of a composite material incorporating fiber

glass, such as boat hulls, sanitary bathtubs and sinks, and panels, and the like" in International Class 2.<sup>1</sup>

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), in view of the prior registration of the mark ARMORGUARD for "paint, namely a polyurethane or polyester top coat paint for wood finishing."<sup>2</sup>

When the Examining Attorney made the refusal final, applicant appealed. Both applicant and the Examining Attorney filed briefs, but no oral hearing was requested. We reverse the refusal to register.

Our determination under Section 2(d) of the Act is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours and Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, however, two key factors are the similarities/dissimilarities between the marks and the similarities/dissimilarities between the goods or services. Federated Foods, Inc. v Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

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<sup>1</sup> Serial No. 76353042, filed December 26, 2001, and asserting first use anywhere and first use in commerce on April 19, 2001.

<sup>2</sup> Registration No. 1,485,815 issued April 26, 1988; affidavits under Sections 8 & 15 accepted and acknowledged, respectively.

At the outset, we find that applicant's mark and the cited registered mark are identical in terms of appearance, sound, connotation and overall commercial impression. Thus, we focus our attention, as have applicant and the Examining Attorney, on the similarity or dissimilarity of applicant's and registrant's goods, trade channels, and classes of purchasers.

It is not necessary that the respective goods be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods or services are related in some manner, or that the circumstances surrounding their marketing are such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods or services. In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991); and In re International Telephone & Telegraph Corp., 197 USPQ2d 910 (TTAB 1978). Further, where the applicant's mark is identical to the registrant's mark, as it is in this case, there need only be a viable relationship between the respective goods in order to find a likelihood of

confusion. In re Concordia International Forwarding Corp., 222 USPQ 355 (TTAB 1983).

Applying these principles to the present case, we find that the Trademark Examining Attorney has failed to establish that applicant's goods and registrant's goods are similar or related in any way which would result in source confusion, notwithstanding that they are marketed under identical marks. The Examining Attorney has asserted that applicant's goods and registrant's goods "may be used in the same contexts, by the same persons, to provide protection to material surfaces" and thus "consumers of coatings for [fiberglass material and wood] would, upon seeing an identical trademark, likely believe both the fiberglass and wood coatings come from the same source." (Brief, pp. 4-5). The Examining Attorney has submitted copies of seven third-party registrations for marks that cover coatings for various uses, including coatings for use on wood and fiberglass materials.

Notwithstanding the Examining Attorney's contention, there is no evidence that purchasers or users of applicant's type of synthetic resins and polyester resin gel coat would also be purchasers or users of registrant's paint for wood finishing. The respective goods, as identified, do not appear to be identical, competitive, or

complementary, and there is insufficient evidence in the record on which we may conclude that the goods are otherwise related in any way. Further, the respective goods, as identified, each have very different applications. Applicant's goods are highly specialized; they are not in the nature of paint-like coatings which an ordinary consumer may use. Rather, they are industrial chemicals used in manufacturing articles and coatings used in connection with fiberglass products. There is no evidence that these types of goods are marketed in the same channels of trade or to the same classes of purchasers, and there is no basis in the record for concluding that they would even be encountered by the same purchasers in circumstances which might give rise to a likelihood of confusion. In determining whether goods are related, the inquiry should be on whether the goods appeal to the same market, not whether one term may be found to describe the goods. See *In re Cotter and Company*, 179 USPQ 828 (TTAB 1973) [no likelihood of confusion was found notwithstanding the use of substantially similar marks on a metal primer for use in conjunction with paints and an undercoating for automobiles].

Further, at the very least, it would appear that purchasers of applicant's goods would be knowledgeable with

respect to the source of chemicals and coatings used in manufacturing fiberglass products, and thus are likely to know that a company offering paints for wood finishing is not likely to be the source of chemicals and coatings for use in manufacturing fiberglass products.

In view of the foregoing, we find that there is no likelihood of confusion in this case.

**Decision:** The refusal to register under Section 2(d) is reversed.